IN THE

Supreme Court of the United States

October Term, 1977
Nos. 77-753, 77-754

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and LOUIS PEICK,

Petitioners,

vs.

JOHN DANIEL,

Respondent.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of the Gray Panthers in Opposition to the Petitions for Writs of Certiorari.

BRUCE K. MILLER, Esq.,
NEAL S. DUDOVITZ, Esq.,
NATIONAL SENIOR CITIZENS LAW CENTER,
1709 West Eighth Street, Suite 500,
Los Angeles, Calif. 90017,
(213) 483-3990,

Attorneys for Amicus Curiae.
Attorneys for Amicus Curiae.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

LIST OF AUTHORITIES

IN THE

Supreme Court of the United States

October Term, 1977
Nos. 77-753, 77-754

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and LOUIS PEICK,

Petitioners,

vs.

JOHN DANIEL,

Respondent.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit.

MOTION OF GRAY PANTHERS FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Gray Panthers respectfully move this Court, pursuant to Supreme Court Rule 42(1), for leave to file the accompanying brief in this matter as amicus curiae in opposition to the petitions for certiorari. In support of this motion, the Gray Panthers show as follows:

1. The parties filing the writs of certiorari in this action have refused to consent to the Gray Panthers filing an amicus curiae brief in opposition to the writs.

2. The Gray Panthers are a national organization whose membership is composed of both young and old persons throughout the United States who seek to reform and improve various institutions and laws that affect the lives of senior citizens. Among the major concerns of the Gray Panthers is assuring that older Americans receive all their entitled benefits from private pension plans.

3. The views of amicus Gray Panthers are particularly important because they are the only organization offering their views in this case which represents the interests of plan participants. Amicus is in fact a unique elderly organization because its members include persons currently employed in work covered by private pension plans, retired workers who have been denied pension benefits and retirees now receiving pensions. Numerous other organizations have sought to participate in this action as amicus curiae in support of the writs of certiorari, however, all of these potential amici have a strong self-interest in the current structure of the pension industry. Amicus ERISA Industry Committee (ERIC) and National Association of Manufacturers (NAM) are composed of corporations who sponsor private pension plans and receive favorable financial and tax benefits for their plans. Amicus AFL-CIO, although a labor organization, also has strong attachments to the pension industry because its leaders are the trustees of numerous private pension plans. Labor unions' interests are essentially those of management rather than that of rank and file workers. Renfrew,

"Fiduciary Responsibility Under the Pension Reform Act," 32 BUS. LAWYER 1829 (1977). The Gray Panthers feel it is critical for the views of plan participants—the consumers of the pension industry—to be heard by this Court.

4. Amicus Gray Panthers further believe that their views are supplemented and aided by the knowledge and experience of their counsel at the National Senior Citizens Law Center. Attorneys from the Law Center have had extensive involvement with the private pension system solely on behalf of pension consumers. National Senior Citizens Law Center has represented individual workers and classes of workers in attempts to gain benefits from dozens of major private pension plans governed by the Taft-Hartley Act and thus similar in structure to the plan negotiated by petitioner Local 705. In addition to litigation, Law Center attorneys were actively involved in the congressional deliberations surrounding the passage of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001, *et seq*. This experience has given amicus' attorneys a unique perspective on the impact of this decision on other federal labor statutes and policies.

5. Amicus Gray Panthers were, because of their unique position as pension consumers, allowed to participate as amicus curiae in support of Mr. Daniel in the proceedings below in the Court of Appeals. Further, the specific views of amicus Gray Panthers on federal labor policy and the integration of the securities laws, ERISA and the Taft-Hartley Act were adopted by the court below. Since the petitions for writs of certiorari directly attack the Court of Appeals holding on this area, amicus contends it is of extreme impor-

tance that they be allowed to file this brief to further explain their views that were affirmed by the court below.

WHEREFORE, it is respectfully moved and requested that the Gray Panthers be granted leave to file the accompanying brief as amicus curiae.

BRUCE K. MILLER, Esq.,
NEAL S. DUDOVITZ, Esq.,
NATIONAL SENIOR CITIZENS LAW CENTER,

By BRUCE K. MILLER,
Attorneys for Amicus Curiae.

BRIEF AMICUS CURIAE OF THE GRAY PANTHERS IN OPPOSITION TO THE PETITIONS FOR WRITS OF CERTIORARI.

The Gray Panthers hereby submit this brief in opposition to the petitions filed in Nos. 77-753 and 77-754 for writs of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on August 20, 1977. The views expressed in this brief are offered in support of the position of respondent John Daniel.

Interest of the Amicus Curiae.

A statement describing the Gray Panthers and their interest in this case is set forth in the preceding motion requesting leave to file this amicus curiae brief.

REASON FOR DENYING THE WRITS REQUESTED BY PETITIONERS.

The Decision of the Circuit Court Advances Rather Than Retards Attainment of Federal Labor Policy.

Both petitioners and the amici who support their position have contended at every stage of this litigation that application of the anti-fraud provisions of the federal securities laws to private pension plans conflicts with important and long-standing federal labor policies. If allowed to persist, their argument continues, this conflict will seriously disrupt the orderly processes of collective bargaining which, thanks to experience and the genius of our labor laws, have come to govern the conditions under which employees work and the compensation which they earn.

This argument was thoroughly briefed before the Circuit Court and received careful consideration in that court's opinion upholding the applicability of the securities laws' protections against fraud to respondent's pension claim. *Daniel v. International Brotherhood of Teamsters, et al.*, 561 F.2d 1223 (7th Cir. 1977). The Circuit Court was not, however, persuaded that its decision presented the sort of grave threat to established relationships between management and labor portrayed by petitioners and their amici. Instead, concurring with this amicus, the court found that to apply the anti-fraud provisions of the securities laws to worker investments in private pension plans, and especially to investments in union negotiated, jointly administered pension plans, would aid in the achievement of the

policy goals reflected in federal labor laws pertaining to such plans. 561 F.2d at 1249-1250.

Petitioners and their supporting amici would now point once again to their concern for the fate of orderly and coherent collective bargaining as reason for this court to relieve them from the modest changes in their own practices entailed by compliance with the Circuit Court's decision. The harmful consequences feared by petitioners are many and not always easy to follow. Each of them depends, however, on the validity of a single, simple premise, perhaps best summarized by petitioner Local 705's contention that every aspect of an employee's interest in a union negotiated pension fund, including the "funding and administration" of the fund, is the exclusive "business of the employees' collective bargaining representative . . . subject only to the duty of fair representation." Petition for Writ of Certiorari of Local 705, International Brotherhood of Teamsters, *et al.*, at 36. This premise is manifestly false.

The pension plan from which respondent Daniel has claimed benefits has been described by petitioner International Brotherhood of Teamsters as "typical of collectively bargained, compulsory non-contributory plans." Petition for Writ of Certiorari of International Brotherhood of Teamsters, at 4. It is on the structure and administration of plans of this sort which petitioners focus their concerns about the disruptive effects of the Circuit Court's decision for federal labor policy. Such a focus is instructive, for a deliberate and specific

federal labor policy for collectively bargained pension plans has been in effect for some 30 years. And it is this policy, not the Circuit Court's decision, which embodies petitioners' worst fear—the removal of control over a worker's interest in pension benefits from the collective bargaining arena.

Since 1947, collectively bargained, compulsory noncontributory pension plans, of which the Local 705 plan is concededly representative, have been organized and operated under the authority of Section 302(c)(5) of the Taft-Hartley Act, 29 U.S.C. §186(c)(5). A major purpose of Section 302(c)(5), as explained by its chief sponsor, Senator Taft was that a pension fund

> "Shall be a perfectly definite fund, that its purposes shall be stated so that each employee can know what he is entitled to, can go to court and enforce his rights in the fund, and that it *shall not be, therefore, in the sole discretion of the union or union leaders or usable for any purpose which they may think is to the advantage of the union or the employee.*" 2 NLRB, LEGISLATIVE HISTORY OF LABOR MANAGEMENT RELATIONS ACT OF 1947, at 1305 (1948) (emphasis supplied).

The means settled upon by Congress for accomplishing this purpose was a general prohibition against employer payments to unions or union officials for any purpose, coupled with an exception for employer payments to an employee welfare or pension fund established and operated in conformity with a number of specific statutory requirements. The most important of these requirements are that such a fund must be held in trust and that control over the trust must

not rest with the union which represents some all) of the employees for whom it was established, but rather with a board of trustees consisting of equal numbers of union appointed and employer appointed members. Above all, the trust must be operated by its trustees "for the sole and exclusive benefit of the employees" of employers contributing to it. Sec. 302(c)(5)(A), (B), 29 U.S.C. §186(c)(5)(A), (B).

The choice of a trust structure, legally separate from the union, as the medium for operating a collectively bargained pension fund, and especially, the adoption of the "sole and exclusive benefit" standard as the measure of trustee obligation to workers covered by the fund, have carried legal and policy consequences which far surpass in their importance anything contemplated by the opinion of the Circuit Court here. Most fundamentally, these decisions removed power over an individual employee's pension rights from his chosen representative and vested that power instead in the board of trustees of his pension plan, an entity owing duties to him that are very different from his union's duty fairly to represent him. The United States Court of Appeals for the District of Columbia Circuit has defined these duties with considerable care in a series of decisions involving the eligibility conditions for benefits from the United Mine Workers Welfare and Retirement Fund. In the most thoroughly elaborated of these decisions, *Roark v. Lewis*, 401 F.2d 425 (D.C. Cir. 1968), the D.C. Circuit described the relationship between trustees and covered workers as fiduciary in nature, analogous to the relationship between trustee and beneficiary at common law:

> "[Sec. 302(c)(5)] explicitly casts authority to create such a [pension] fund in trust terms, con-

> sequently the scope of court review of trustees' action has been defined as one of determining whether their action was arbitrary or capricious. If it was, then potential beneficiaries of the trust may justly complain that they were entitled to have a higher standard of conduct exercised on their behalf." 401 F.2d at 426-427.

The striking incompatibility of this standard of conduct with the role and function of a union in its representative capacity has recently been described with some force in a thoughtful opinion by Judge Charles Renfrew of the United States District Court for the Northern District of California:

> "The function of pension fund trustees is significantly different from the roles of union and management in ordinary labor affairs such as contract negotiations or grievance matters. The duty of fair representation is imposed upon a union because by law it is the exclusive representative of the bargaining unit. Pension fund trustees, on the other hand, are not advocates; they are fiduciaries. All trustees, labor and management representatives alike, have a duty to take those actions which they believe to be in the best interests of the fund's beneficiaries.
>
> . . .
>
> ". . . It is for this reason that the proper standards of conduct are the fiduciary duties set forth in ERISA and the requirement of § 302(c)(5) that such funds be administered for the 'sole and exclusive benefit of the employees.' Nothing can be gained by casting trustees in the role of labor negotiators who represent the interests of only

> one side." *Morgan v. Laborers Pension Trust Fund for Northern California,* 433 F. Supp. 518, 530 (N.D. Cal. 1977).

Thus, federal labor policy concerning collectively bargained pension plans places control over such plans in the hands of a joint, union-management board of trustees but tempers that control by requiring that the joint board observe the general fiduciary obligation to avoid arbitrary or capricious treatment of covered workers. It is this legal principle, established by Section 302(c)(5), and not the sanctity of the collective bargaining process or the power of exclusive representation vested in workers' chosen representatives, which has governed the structure, funding, coverage, benefit eligibility, administration and every other aspect of pension funds like that negotiated by Local 705, since the enactment of the Taft-Hartley Act in 1947. It is evident that the dire consequences predicated by petitioners have been matters of settled law for a generation—and have scarcely produced the chaotic effects petitioners now claim to fear.

When measured against the policies of Section 302 (c)(5), the effects of the Circuit Court's decision are plainly complementary rather than disruptive. The central requirements of the securities laws' anti-fraud provisions pertain to disclosure of salient information to workers covered by a pension plan. Comprehensive disclosure from trustees to covered workers of all information relevant to their status as trust beneficiaries lies, of course, at the heart of the fiduciary obligations codified by the "sole and exclusive benefit" standard. *See, e.g., Burroughs v. Board of Trustees,* 542 F.2d 1128 (9th Cir. 1976), *cert. denied* 97 S.Ct. 1113

(1977). The major impact of the decision of the Circuit Court is to flesh out this obligation by specifying certain particular information, relating chiefly to the probability of qualifying for the benefits provided by a pension plan, which must be disclosed to a covered worker at various stages of his participation in that plan. Because information of this sort is derivable largely through the application of actuarial techniques, it is nearly always within the exclusive domain of the trustees of a pension plan. For plan trustees (uniquely among the parties concerned with the establishment and operation of a pension fund) must invariably retain actuarial consulting help in order to fashion a sensible eligibility and benefit structure for the plan they administer. The obligations entailed by the decision of the Circuit Court are thus entirely consistent with the range of functions and duties already assumed by boards of trustees of collectively bargained pension plans. It was this basic congruence of responsibilities to which the Circuit Court referred in its finding that application of the anti-fraud requirements of the securities law to such plans "will further the purpose of Section 302(c)(5) of the Labor Management Relations Act by letting each employee know to what he is entitled under a union pension fund." 561 F.2d at 1250.

Conclusion.

In sum, petitioners' fears of a collision between the requirements imposed by the Circuit Court and established federal labor policy are baseless, and cannot therefore serve as a proper basis for this court's issuance of a writ of certiorari. The collective bargaining practices by which petitioners set their store have indeed been disrupted, albeit by Congress through the enact-

ment of the Taft-Hartley Act rather than by the decision of the Circuit Court here. That decision, by providing specific guarantees of pertinent information to workers covered by pension plans, merely augments a federally created fiduciary obligation that is by now nothing less than venerable. Amicus Gray Panthers therefore respectfully submits that the petitions for writs of certiorari should be denied.

Dated: January 13, 1978.

Respectfully submitted,

BRUCE K. MILLER, Esq.,
NEAL S. DUDOVITZ, Esq.,
NATIONAL SENIOR CITIZENS LAW CENTER,
Attorneys for Amicus Curiae.

Service of the within and receipt of a copy thereof is hereby admitted this ..... day of January, A.D. 1978.

_____

_____